

HOUSE BILL 992

P2

2lr2462

By: **Delegate Morhaim**

Introduced and read first time: February 10, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Intergovernmental Cooperative Purchasing Agreement**
3 **Requirements – Authority to Withhold Funds to Local Entities**

4 FOR the purpose of requiring certain State and local entities to make certain efforts to
5 determine if another State or local entity is participating in a certain contract
6 before initiating a certain procurement; authorizing that, in certain fiscal years,
7 the secretaries of certain agencies may withhold certain percentages of funds
8 distributed under certain programs to local entities under certain
9 circumstances; and generally relating to cooperative purchasing.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 13–110
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2011 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – State Finance and Procurement**

18 13–110.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) “Cooperative entity” means one or more State or local entities that
21 enter into an agreement for the cooperative or joint administration of programs.

22 (3) “Governmental entity” means:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) the federal government or an agency or other
2 instrumentality of the federal government;

3 (ii) another state or an agency or other instrumentality of
4 another state;

5 (iii) a bistate or multistate agency;

6 (iv) a county, municipal corporation, or other political
7 subdivision of the State or of another state, or an agency or other instrumentality of
8 the political subdivision;

9 (v) a bicounty or multicounty agency;

10 (vi) a primary procurement unit; or

11 (vii) an affiliation, alliance, consortium, or group composed solely
12 of governmental entities that is established for purposes of promoting
13 intergovernmental cooperative purchasing.

14 (4) "Intergovernmental cooperative purchasing agreement" means a
15 contract:

16 (i) 1. entered into by at least one governmental entity and a
17 person selected in a manner that is consistent with the purposes set forth under §
18 11–201 of this article;

19 2. that is available for use by the governmental entity
20 entering the contract and at least one additional governmental entity which may, but
21 need not be, an original party to the contract; and

22 3. that is intended to promote efficiency and savings
23 that can result from intergovernmental cooperative purchasing; or

24 (ii) between a primary procurement unit and a person who, at
25 the time the intergovernmental cooperative purchasing agreement is awarded, has a
26 contract with the federal government or an agency or other instrumentality of the
27 federal government, and who agrees to provide the unit with identical prices, terms,
28 and conditions as stipulated in the federal contract.

29 (5) (i) "Local entity" means a county, municipal corporation,
30 bicounty or multicounty agency, public authority, special taxing district, or other
31 political subdivision or unit of a political subdivision of this State.

32 (ii) "Local entity" includes boards of education and library
33 boards that receive funding from the State.

1 (6) “Not-for-profit entity” means a corporation incorporated in the
2 State, or otherwise qualified to do business in the State that has been determined by
3 the Internal Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6)
4 of the Internal Revenue Code.

5 (7) “State entity” means a department, board, commission, agency, or
6 a subunit in the Executive branch of State government.

7 (b) (1) Subject to § 12-107 of this article, whenever a primary
8 procurement unit procurement officer determines that it is in the best interest of the
9 State to sponsor or participate in an intergovernmental cooperative purchasing
10 agreement, with the approval of the unit head and subject to any other approval
11 required by law, the primary procurement unit may become a party to or participate
12 under the agreement.

13 (2) A determination under this subsection shall be in writing and
14 include a statement that the intergovernmental cooperative purchasing agreement:

15 (i) will provide cost benefits to the State, promote
16 administrative efficiencies, or promote intergovernmental cooperation; and

17 (ii) is not intended to evade the purposes of this Division II.

18 (3) If a primary procurement unit sponsors an intergovernmental
19 cooperative purchasing agreement:

20 (i) the contract shall be awarded in the same manner as the
21 contract would be awarded under this Division II if the unit was the sole participant
22 under the contract; and

23 (ii) all procedures under this Division II, including procedures
24 governing contract claims and protests, shall apply.

25 (4) If a primary procurement unit participates in an
26 intergovernmental cooperative purchasing agreement, any protest or contract claim
27 involving the agreement shall be handled in accordance with the terms of the
28 agreement.

29 (c) (1) Except as provided in paragraph (2) of this subsection, each
30 procurement contract for supplies or services entered into by a State or local entity
31 shall include a provision that facilitates other State and local entities and
32 not-for-profit entities to participate in the contract.

33 (2) (i) This subsection does not apply to:

34 1. a procurement for a capital facility, improvement, or
35 other unique purchase; or

1 **(F) BEFORE INITIATING A PROCUREMENT FOR SUPPLIES OR SERVICES,**
2 **A STATE OR LOCAL ENTITY SHALL MAKE A REASONABLE EFFORT TO DETERMINE**
3 **IF ANOTHER STATE OR LOCAL ENTITY IS PARTICIPATING IN A CONTRACT FOR**
4 **THE SAME SUPPLIES OR SERVICES.**

5 **(G) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE**
6 **THE MEANINGS INDICATED.**

7 **(II) “PROGRAM” MEANS:**

8 1. **THE FOUNDATION PROGRAM OR ANY OTHER**
9 **PROGRAM FOR BASIC CURRENT EXPENSES FUNDED IN ACCORDANCE WITH**
10 **TITLE 5, SUBTITLE 2 OF THE EDUCATION ARTICLE;**

11 2. **THE COUNTY–STATE MINIMUM LIBRARY**
12 **PROGRAM OR ANY OTHER PROGRAM FUNDED IN ACCORDANCE WITH TITLE 23,**
13 **SUBTITLE 5 OF THE EDUCATION ARTICLE;**

14 3. **LOCAL HEALTH PROGRAMS FUNDED IN**
15 **ACCORDANCE WITH TITLE 2, SUBTITLE 3 OF THE HEALTH – GENERAL ARTICLE;**
16 **AND**

17 4. **HIGHWAY USER PROGRAMS FUNDED IN**
18 **ACCORDANCE WITH TITLE 8, SUBTITLE 4 OF THE TRANSPORTATION ARTICLE.**

19 **(III) “SECRETARY” MEANS:**

20 1. **THE STATE SUPERINTENDENT OF SCHOOLS;**

21 2. **THE SECRETARY OF HEALTH AND MENTAL**
22 **HYGIENE; OR**

23 3. **THE SECRETARY OF TRANSPORTATION.**

24 **(2) A SECRETARY MAY WITHHOLD FUNDS DISTRIBUTED UNDER A**
25 **PROGRAM TO A LOCAL ENTITY AS FOLLOWS:**

26 **(I) FOR FISCAL YEAR 2014, A SECRETARY MAY WITHHOLD**
27 **UP TO 0.5% UNLESS THE LOCAL ENTITY:**

28 1. **REPORTS THAT THE LOCAL ENTITY HAS ENTERED**
29 **IN OR DEMONSTRATES THAT IT ACTIVELY PARTICIPATES IN AT LEAST ONE**
30 **INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT;**

1 **2. SUBMITS A PLAN FOR IMPLEMENTING AN**
2 **INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR**

3 **3. DEMONSTRATES THAT PROCUREMENT FOR THE**
4 **LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT**
5 **COMPLIES WITH ITEM 1 OR 2 OF THIS ITEM;**

6 **(II) FOR FISCAL YEAR 2015, A SECRETARY MAY WITHHOLD**
7 **UP TO 0.5% UNLESS THE LOCAL ENTITY:**

8 **1. DEMONSTRATES THAT THE LOCAL ENTITY**
9 **ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
10 **COOPERATIVE PURCHASING AGREEMENT; OR**

11 **2. DEMONSTRATES THAT PROCUREMENT FOR THE**
12 **LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT**
13 **ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
14 **COOPERATIVE PURCHASING AGREEMENT; AND**

15 **(III) FOR FISCAL YEAR 2016 AND EACH FISCAL YEAR**
16 **THEREAFTER, A SECRETARY MAY WITHHOLD UP TO 1% UNLESS THE LOCAL**
17 **ENTITY:**

18 **1. DEMONSTRATES THAT THE LOCAL ENTITY**
19 **ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
20 **COOPERATIVE PURCHASING AGREEMENT; OR**

21 **2. DEMONSTRATES THAT PROCUREMENT FOR THE**
22 **LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT**
23 **ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
24 **COOPERATIVE PURCHASING AGREEMENT.**

25 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
26 **June 1, 2012.**